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UNCLAS SECTION 01 OF 02 TEGUCIGALPA 000125

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DOJ/OFL, STATE DEPARTMENT FOR L/DL; INFO WHA/EX, USAID/W/GC

PERSONAL INFORMATION

E.O 12958: N/A

TAGS: [EAID](#) [KLIG](#) [KTIA](#) [AMGT](#) [HO](#)

SUBJECT: FOREIGN ADMINISTRATIVE PROCEEDING,
USAID/TEGUCIGALPA

1. Summary: The purpose of this cable is to notify Washington legal offices of USAID, the Department of State and the Department of Justice of an administrative labor claim filed by a Honduran National. Also, this cable seeks Department guidance on stopping a GOH pattern of repeatedly transmitting such cases to the U.S. Mission in Honduras. In the present case, a Honduran national was offered employment by USAID/Honduras based on a temporary security clearance, and subsequently not hired when she failed to obtain a permanent security clearance. The claim was submitted to the Ministry of Labor and the transmitted to USAID through the Ministry of Foreign Affairs of the Republic of Honduras. The claim seeks a 'reconciliation hearing' between USAID's Executive Officer and the claimant's legal representative.

2. Information related to the claim is listed below:

A. Name of plaintiff(s) and defendant(s):
Plaintiff: Lidia Margarita Fromm Cea; and defendant: USAID. USAID/Honduras Executive Officer Neil Kester is summoned to respond to the labor claim.

B. Court or tribunal where the suit was filed and any case caption and docket number:
Ministry of Labor and Social Security; case number 106.

C. How (mail, hand delivery, diplomatic channels, etc.) and to whom notice of suit was served (USAID, embassy, contractor, etc.): Mail through diplomatic channels addressed to Mr. Neil Kester, Executive Officer of the Agency for International Development in Honduras.

D. Date of service (on the notice itself) and date service was received by the mission or embassy:
Date of transmittal is 16 December 2003 and note and documents were received at USAID on 19 December, 2003.

E. Time period provided in which to appear or respond:
None provided.

F. Description of documents received:

F1. Transmittal Letter from Ricardo-Alonso Flores, General Director of Diplomatic Ceremony (Ministry of Foreign Affairs) addressed to Mr. Neil Kester, Executive Officer of the Agency for International Development which transmits case no. 106 in reference to the labor claim presented by Lidia Margarita Fromm Cea, dated 16 December, 2003.

F2. Transmittal Note from the General Secretariat (Ministry of Foreign Affairs) to the General Direction of Diplomatic Ceremonial, dated 16 December, 2003.

F3. Document entitled "Solicitation for Conciliation Hearing" signed by Lidia Margarita Fromm Cea, and naming as her legal representative German Edgardo Leitzelar Hernandez, dated 13 November, 2003.

F4. Copy of a letter offering employment to Lidia Fromm, signed by Neil Kester, Executive Officer, USAID/Tegucigalpa, dated 5 September, 2003.

F5. Copy of Personal Services Contract Number 522-S-00-03-00217-00, between Lidia Fromm and USAID acting thru Neil Kester Contracting Officer. [NOTE: The copy of contract submitted by Ms. Fromm omits Article VI, which states "The contract is contingent on Security and Medical Clearances. If the Security and Medical Clearances are not granted, the contract will be terminated effective immediately."]

F6. Email from USAID/Honduras Personnel Specialist Vivian Idiaquez to Lidia Fromm, dated 26 September, 2003 discussing the grant of a 'temporary' security clearance.

F7. Letter from Neil Kester to Lidia Fromm dated 10 October, 2003, informing Ms. Fromm of new information, that her temporary security clearance would not be converted to a final clearance, and that the provisional security clearance had been rescinded.

F8. Letter Fromm/Kester 13 October, 2003.

F9. Letter Fromm to U.S. Ambassador Palmer dated 16 October. F10. Letter Kester/Fromm of 22 October responding to letters from Fromm.

F11. Ms. Fromm's document listing the succession of events.

F12. Ministry of Labor receipt of claim dated 14 November, 2003.

F13. Ministry of Labor authorization to transfer the claim to Ministry of Foreign Affairs dated 12 December, 2003.

1G. Copies of all above documents are available as electronic documents in word format by contacting: Mr. Neil Kester (nkester@usaid.gov), Executive Officer, USAID/Honduras - ph.: (504) 236-9320 and fax (504) 236-7776.

13. Short description of the nature of the legal suit, proceeding, or action: Ms. Fromm was selected by competitive process to fill an FSN PSC position as USAID/Honduras' Project Management Specialist for Education. On 11 September, 2003, the Regional Security Office provided an initial 'temporary' security clearance for Ms. Fromm's initial period, NTE 120 days. Based on the foregoing, and on Medical Clearance, USAID/Honduras/EXO signed a contract with Ms. Fromm on 23 September. By 10 October, the RSO had determined based on further information that Ms. Fromm would not be eligible for a security certification for full employment. USAID/Honduras/EXO immediately informed Ms. Fromm that she would not be eligible for employment under the authority in the contract, clause A.6.3 which states "The contract is contingent on Security and Medical Clearances. If the Security and Medical Clearances are not granted, the contract will be terminated effective immediately." NOTE: Ms. Fromm had not yet entered on duty at the time she received notice that she would not be granted the full security clearance. On 19 December, 2003, USAID/Honduras received Ms. Fromm's request for a reconciliation hearing.

14. Mission observations and proposed course of action.

1A. Mission proposes to deny Ms. Fromm's request for a reconciliation hearing with the USAID Executive Officer on the basis that Mr. Kester is an accredited diplomatic agent under Article 31 (1) of the Vienna Convention on Diplomatic Relations and enjoys complete immunity from criminal jurisdiction of Honduras and comprehensive immunity from the civil and administrative jurisdiction of Honduras. In addition, under Article 31 (2) of the Vienna Convention, Mr. Kester is not obligated to provide evidence as a witness.

1B. Furthermore, the Mission proposes to put the Ministry of Foreign Affairs on notice to prevent future transmittal of administrative labor claims such as this one, four of which have been transmitted in the past year, naming accredited diplomatic agents in civil matters under practices set forth in the Honduran Labor Code.

1C. Mission proposes to respond by diplomatic note which, in addition to rebutting the claim from Lidia Fromm, will provide general terms so that any future such claims that subject the U.S. Mission administrative labor cases under Honduran law could be returned to the MOFA with reference to the present dipnote, and no further discussion.

15. Am/Embassy Tegucigalpa seeks concurrence with this proposal, or appropriate alternate guidance.

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